No. 92-489

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ELPIS SAKARIA,

Petitioner,

v.

ALLSTATE LIFE INSURANCE COMPANY
MINNESOTA MUTUAL LIFE INSURANCE COMPANY
AMEX LIFE ASSURANCE COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL ESHER YAGGY*
MICHAEL S. BARRANCO
DIANE M. LANK
PIPER & MARBURY
36 South Charles Street
Baltimore, Maryland 21201
(410) 539-2530

*Counsel of Record

BEST AVAILABLE COPY

THE DAILY RECORD COMPANY, 11 EAST SARATOGA STREET, BALTIMORE, MD 21202

QUESTIONS PRESENTED

1. Whether this Court should consider petitioner's argument that the "bad faith" exception standard is not "objective reasonableness" when that issue not was preserved through objections at the trial court level or on appeal, and is based on a false premise.

2. Whether the District Court properly awarded sanctions against petitioner on the grounds of Rule 11 and the bad-faith exception to the American Rule, when it found that she had misled respondents in her answers to interrogatories, was the gatekeeper for all factual information, and was aware of the lack of support for her claim, even though she was represented by counsel.

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In The

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ELPIS SAKARIA,

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ALLSTATE LIFE INSURANCE COMPANY
MINNESOTA MUTUAL LIFE INSURANCE COMPANY
AMEX LIFE ASSURANCE COMPANY,

Respondents

Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

In December, 1987, Elpis Sakaria, petitioner, ("Sakaria") filed a lawsuit against respondents, Allstate Life Insurance Company, AMEX Life Assurance Company, and

Minnesota Mutual Life Insurance Company (the "Insurers"),[1] claiming over One Million Dollars ($1,000,000) in accidental death benefits arising out of the death of her husband, Jagdish Sakaria. The Insurers issued the accidental death policies to Sakaria's deceased husband, who died on December 29, 1985 in Greece.[2]

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[1]Allstate Life Insurance Company is a subsidiary of Allstate Insurance Company, which is a subsidiary of Sears, Roebuck & Co., a publicly-traded corporation. AMEX Life Assurance Company is a subsidiary of American Express Travel Related Services Company, Inc., which is a subsidiary of American Express Company, a publicly-traded corporation. Minnesota Mutual Life Insurance Company has no parent company. No respondent has subsidiaries, other than wholly-owned subsidiaries.

[2]Sakaria now alleges many "facts" that that she never presented to the District Court prior to the entry of summary judgment or prior to the Report and Recommendation regarding sanctions. Some allegations are presented for the first time in the petition for certiorari. The Insurers take exception to all allegations not supported prior to the entry of the sanctions Report and Recommendation. These allegations include the following:

1. "When Mr. Sakaria arrived in Athens, he was met by . . . Labros Stamolous [sic]." Pet. 2.

2. "Mr. Bafitis stated that Mr. Sakaria, was 'extremely pale and yellow . . .'" Pet. 2-3.

3. "Mr. Sakaria related that the captain had informed the passengers that there was fighting at the airport." Pet. 3.

4. "[Decedent] reported seeing bodies, covered with sheets, when he visited a men's room in the Rome airport." Pet. 3.

5. "Mr. Sakaria refused dinner that evening. . ." Pet. 3.

6. "Mr. Sakaria [broke] out in tears several times." Pet. 3.

7. "Mrs. Sakaria . . . provid[ed] [the Insurers] with . . . a narrative of Mr. Sakaria's medical conditions."

In her suit, Sakaria claimed that her husband died due to the "direct effects of the psychological trauma which he suffered during the course of his travel from Washington, D.C. to Athens, Greece" after "all passengers" on his flight viewed "the bloody aftermath" of a terrorist attack at the Rome airport on December 27, 1985. *Complaint*, ¶¶ 12, App. 3. At no time did Sakaria make any allegation that the deceased was physically harmed as a result of the attack or its aftermath.

During the next two years, the Insurers engaged in discovery. They propounded interrogatories and requests for production on Sakaria, seeking any factual basis for Sakaria's claim. Sakaria's Answers to Interrogatories, served nearly one year after suit was filed and after repeated requests, merely repeated the allegations contained in her complaint.

The Answers to Interrogatories, signed by Sakaria under penalties of perjury, referred repeatedly to two statements that she personally secured and translated. One statement was that of her father, Labros Stamoulis, a Greek citizen; the second was that of a Greek-speaking close family friend, Nicholas Bafitis. App. 21 (Stamoulis statement); App. 22 (Bafitis statement). Those statements, in turn, relied entirely on purported statements of the decedent. For example, Sakaria claimed that "the aftermath of the bloody attack" was visible to decedent, and cited the Bafitis and Stamoulis hearsay statements. Sakaria further stated, under oath, that "[t]he only information available to me at this time is that which was provided by Mr. Nick Bafitis and Labros Stamoulis, the statements of both attached hereto." Pet. App. 4b.

In her Answers to Interrogatories, Sakaria also claimed that her husband was "in excellent mental and physical health

immediately prior to leaving the United States . . ." Pet. App. 2b.

Through the course of discovery, the Insurers ascertained that, contrary to Sakaria's Answers to Interrogatories, the decedent had not been exposed to either the attack or its aftermath and could not have heard grenades exploding or any "attack" occurring outside the aircraft. Both the Stamoulis and Bafitis statements were wholly unreliable. Indeed, the plane did not land until after the attack. App. 10. The Insurers located and deposed passengers, who agreed unanimously that at no time did they see the attack or its aftermath; instead, they were kept in a safe, secure area. The passengers also disputed the Bafitis hearsay statement that the aircraft was "suffocating." App. 10.

Finally, the Insurers independently learned that the decedent was 100% mentally and physically disabled, as a result of an automobile-pedestrian accident six years prior. Manifestations of decedent's disability included confabulations, paranoia, and hearing non-existent noises. App. 9.

At no time did Sakaria or her counsel[3] undertake any

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[3]With the petition for certiorari, Sakaria has engaged her fifth set of counsel. Sakaria engaged one firm to file suit; it withdrew before answering discovery or participating in any manner; Mr. Huffman, a sole practitioner, represented Sakaria through summary judgment proceedings; Sakaria retained a third set of counsel through trial court sanctions proceedings, until the magistrate judge issued the Report and Recommendation recommending sanctions against both Sakaria and Mr. Huffman; Sakaria retained a fourth set of counsel to file objections to the Report and

discovery or furnish any facts supporting her claim. Instead, in furnishing information to her expert, during her deposition, in her opposition to the motion for summary judgment, and even through the initial sanctions proceedings, Sakaria continued to rely entirely on the Bafitis and Stamoulis hearsay statements. The passengers, unanimously and under oath, contradicted decendent's hearsay statements.

On October 16, 1989, the Insurers filed a motion for summary judgment, demonstrating that no facts existed that would entitle Sakaria to accidental death benefits under applicable law. On that same date, Sakaria's deposition was taken in her related lawsuit against TWA, in which she admitted that she had no facts to support the allegations made in her complaint. Pet. App. 23a & n. 14.

Sakaria opposed the Insurers' motion for summary judgment, but failed to attach any affidavits, declarations, or point to any testimony in the depositions that supported her opposition. She continued to rely on the Bafitis and Stamoulis hearsay statements that she, personally, had secured.

The magistrate judge, to whom the motion for summary judgment had been referred for a report and recommendation, recommended to the District Judge that the Insurers' motion be granted. Sakaria did not object or take any exceptions to the magistrate judge's Report and Recommendation, and the trial court entered summary judgment on February 12, 1990. App. 20.

Recommendation, who remained through the appeal to the Fourth Circuit; a fifth set has now been retained for Supreme Court proceedings.

On March 26, 1990, the Insurers filed their motion for sanctions against, *inter alia*, Sakaria, which she opposed. On November 5, 1990, the magistrate judge held a hearing, at which Sakaria requested she be heard personally. On May 8, 1991, the magistrate judge issued a Report and Recommendation, recommending that sanctions be awarded against Sakaria and her counsel in the amount of $4,000 each.[4]

The Report and Recommendation found that Sakaria was subject to sanctions on two grounds: Rule 11, Fed. R. Civ. P., and the bad-faith exception to the American Rule. Only after the Report and Recommendation were issued did Sakaria furnish the affidavits of herself and Mr. Bafitis that she now submits in her appendix at Pet. App. 6b-16b. The District Court, in a separate opinion, adopted the magistrate judge's Report and Recommendation, and also found sanctions warranted under both Rule 11 and the bad-faith exception.

At no time, in her objections the Report or Recommendation, in her brief on appeal to the Fourth Circuit, or in oral argument at the Fourth Circuit, did Sakaria argue that she was sanctioned solely under the "bad-

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[4]Interestingly, Sakaria repeatedly suggests that the sanction involved "fee shifting," but failed to bring to the Court's attention that the Insurers' legal fees and expenses through summary judgment exceeded $100,000. The Report and Recommendation found that the fees were "not excessively high," given that over $1,000,000 was at stake. Pet. App. 26a. As noted in the Report and Recommendation, the sanction was "well below what undisputably would be a 'reasonable attorney's fee.'" Pet. App. 26a.

faith" exception, or that the District Court improperly used an objective standard in measuring her bad faith.

Sakaria seeks a writ of certiorari after the Fourth Circuit, in a 2-sentence summary affirmance of the actions of the District Court, termed her appeal "without merit." Pet. App. 4a.

SUMMARY OF ARGUMENT

For the first time, Sakaria now argues that sanctions were recommended by the magistrate judge and awarded by District Court on the sole basis of "bad faith" as applied through "objective reasonableness," and that an objective test is inappropriate in applying the bad-faith exception.

Sakaria's argument ignores the plain language of the Report and Recommendation, and the plain language of the District Court's Memorandum. Moreover, plaintiff now attempts to raise the question of an inappropriate standard for the first time in a petition for writ of certiorari.

Seizing upon only one of many reasons cited by the District Court in adopting the Report and Recommendation, Sakaria additionally argues that she should be excused from sanctions because, according to the District Court, her lawyer failed to advise her to dismiss the action. In her opposition to the Insurers' Motion for Sanctions, she at no time claimed that she proceeded only on advice of counsel. Only now, after the time had passed when the Court and the Insurers could question her former counsel, did she attempt to set forth this argument. The record is devoid of any colorable evidence that addresses advice rendered by her counsel to her, other than her own self-serving statement. Moreover,

her argument ignores the unusually active role she played in investigation, discovery and advocacy.

ARGUMENT

I. Sakaria Improperly Seeks Review Of Issues Not Previously Raised.

Sakaria now argues that the magistrate judge improperly based the Report and Recommendation on bad faith, and improperly applied an objective standard to the finding of bad faith. Sakaria has not previously taken this position.

Because the District Court referred the sanctions proceeding to a magistrate judge, Sakaria has had two opportunities to raise the argument she now raises for the first time. She had the opportunity to raise it in her objections to the Report and Recommendation. Had she properly preserved her argument at that stage, she had the opportunity to present her argument in her appeal to the Fourth Circuit. She did neither.

A. Sakaria Did Not Object To The Report and Recommendation On The Grounds That The Wrong Standard Was Applied.

To the extent that Sakaria now argues that the magistrate judge applied an objective test in determining Sakaria's bad faith, she has waived that argument by not raising it in her objections to the Report and Recommendation. In her objections, Sakaria chose to argue that her conduct was justified, even if misleading.

The waiver analysis begins by reference to the procedure to be followed in objecting to a report and recommendation

issued by a magistrate judge. 28 U.S.C. § 636 provides, in relevant part, that:

> Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made . . . .

The Fourth Circuit has held, since 1984, that failure to raise objections constitute waiver of those objections. *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir.), *cert. denied*, 467 U.S. 1208 (1984). The Fourth Circuit based its holding on the incongruity that an opposite holding would create. The court noted that without such a rule, parties would be encouraged to bypass the objections phase, and proceed directly to appeal. The court cited as an analogous circumstance the rule that "prevents a party from raising an issue before a circuit court of appeals that was not raised before the District Court." *Id.*

In *Thomas v. Arn*, 474 U.S. 140 (1985), this Court reviewed whether the waiver rule adopted by the Fourth and other circuit courts of appeals met statutory and constitutional muster. The Court noted that such waiver rules "are supported by sound considerations of judicial economy." *Id.* at 147. The Court stated that waiver rules serve a useful purpose in "precluding appellate review of any issue not contained in objections, [and] prevent[ing] a litigant from 'sand-bagging' the district judge by failing to object and then appealing." *Id.* at 147-48. The Court also noted that the wavier rules are applicable to both factual and legal issues. *Id.* at 150.

The reasoning set forth in *Thomas* and *Schronce* are applicable here. Sakaria is now raising, for the first time, the issue of whether the magistrate judge applied an objective test to the bad-faith finding. Her untimliness deprives the trial court of the opportunity to review that issue. Sakaria attempts to "sandbag" the District Court, the precise harm against which this Court cautioned in *Thomas*, *supra* at 147-48.

During her appeal to the Fourth Circuit, Sakaria's then-counsel apparently concluded that either Sakaria had waived the objective standard argument, or that the lower court had applied the appropriate standard. In any event, Sakaria did not raise her newly-minted argument in her appeal to the Fourth Circuit. Had she done so, the argument would be precluded by the *Schronce* waiver.

Sakaria should not now be given the opportunity to raise in this Court what she would have been barred from raising in the Fourth Circuit under the waiver rule. The Fourth Circuit noted in *Snyder v. Ridenour*, 889 F.2d 1363, 1366 n. 2 (4th Cir. 1989) that "[i]t occurs to us that the objection now made to the magistrate's report may well be an afterthought, at best, by new counsel." Given the numerous sets of counsel retained by Sakaria, a similar situation exists in the case at bar. *See* footnote 3, *supra*.

B. Assuming For The Purposes Of Argument That Sakaria Could Have Raised The Objective Standard Argument In Her Appeal To The Fourth Circuit, She Did Not Do So, Which Bars Consideration By This Court.

The *Schronce* waiver rule is derived, in part, from the general rule that issues not preserved in a lower court should

not be considered by the reviewing court. In *Hormel v. Helvering*, 312 U.S. 552, 556 (1941), this Court discussed the reasons underlying this established long-established rule:

> Ordinarily an appellate court does not give consideration to issues not raised below. For our procedural scheme contemplates that parties shall come to issue in the trial forum vested with authority to determine questions of fact. This is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide; it is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence.

This Court has long applied the rule that issues not properly preserved will not be reviewed, absent exceptional circumstances. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (citing *Hormel, supra*); *Lawn v. United States*, 355 U.S. 339, 362 n. 16, and cases cited therein. Sakaria has not argued, and cannot argue, that exceptional circumstances exist here.

The reasons that Sakaria chose not to raise the objective standard issue in the Fourth Circuit are irrelevant; what is relevant is that she did not. For that reason, her petition should be denied.

II. Sakaria's Argument That The Court Improperly Applied An "Objective Reasonableness" Standard To Its Sanction Based On Bad Faith Is Unsupported By The Record.

A. The Standard Of Review Of The District Court's Decision Is Abuse Of Discretion

The appropriate standard for reviewing sanctions decisions by District Courts is abuse of discretion. *Chambers v. NASCO, Inc.*, 501 U.S. ___, 111 S. Ct. 2123, 115 L. Ed.2d 27, 52 (1991) (sanctions imposed under the inherent power of the court); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990) (sanctions imposed under Rule 11, Fed. R. Civ. P.). The abuse-of-discretion standard is warranted because inquiry into conduct of parties and attorneys is necessarily fact based. Thus, the District Court is in the best position to assess the circumstances justifying sanctions. *Id.* at 404-405.

This standard is particularly appropriate in this action. The magistrate judge who presided over the sanctions proceedings was the same magistrate judge who considered the Insurers' motion for summary judgment. The magistrate judge held a hearing on the Insurers' motions for sanctions, and permitted Sakaria to testify. The magistrate judge was able to consider and weigh, first-hand, Sakaria's testimony, demeanor and conduct.

B. The Facts Set Forth In The Report And Recommendation Support Imposition Of Sanctions Under The Appropriate Standard

Assuming that the Court finds exceptional circumstances exist to permit review of issues not raised below, the petition

remains unjustified on the merits. Sakaria's first "question presented" is based on the incorrect premise that the court held Sakaria to an "objective reasonableness" standard in assessing sanctions based on bad faith, and ignores the Rule-11 basis.[5] Notwithstanding Sakaria's omission, on the bad-faith grounds, the court did not apply an "objective reasonableness" standard, but provided specific, undisputed facts that provide direct evidence of Sakaria's bad faith.

The Report and Recommendation set forth the appropriate test for determining sanctions:

> Parties as well as attorneys also may be sanctioned under the "bad faith" exception to the American Rule, permitting a court to award attorneys' fees against a losing party or attorney who has "'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'"

Pet. App. 19a-20a (citing *Blue v. U.S. Dept. of Army*, 914 F.2d 525, 537 (4th Cir. 1990), *cert. denied*, 111 S.Ct. 1580 (1991), quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59 (1975)).

Contrary to Sakaria's argument at 6 that the court made "no finding" of bad faith, the record demonstrates that magistrate judge indeed made a finding that Sakaria had

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[5]Sakaria does not address that the court recommended sanctions both under Rule 11 and the bad-faith exception. See Pet. App. 19a-20a. Sakaria does not argue that the Rule-11 sanctions, based on signing misleading Answers to Interrogatories, are inappropriate. However, the court did not distinguish between sanctions warranted under Rule 11 and those warranted under the bad-faith exception.

proceeded in bad faith, and provided numerous examples supporting the finding. The court pointed to Sakaria's misleading "answers to interrogatories [signed] under the penalties of perjury that claimed her husband was in excellent physical and mental health and that he saw the aftermath of the terrorist attack in Rome . . . it was incumbent on [Sakaria] to disclose more accurate information concerning her husband's mental condition." Pet. App. 22a-23a.

Moreover, the court pointed several other examples of Sakaria's bad faith: (1) an affidavit authored by Sakaria demonstrating her "unreasonable and intransigent attitude," Pet. App. 24a; (2) Sakaria's contradictory statements in Answers to Interrogatories and her in-court testimony, Pet. App. 23a, n. 13; (3) Sakaria's admission, after discovery had closed, that she had no knowledge of what happened in Rome, Pet. App. 23a-24a, n. 14; and (4) Sakaria's unsupported but signed statement in her affidavit submitted to the court that the plan flew "'into a deadly terrorist attack,'" Pet. App. 24a, n. 15.

The Report and Recommendation uses subjective language; the court did not state that Sakaria "knew *or should have known*" that her conduct was unreasonable. Rather, the court detailed the specific conduct undertaken by Sakaria, using verbs demonstrating Sakaria's actual knowledge of her own conduct.

The examples of Sakaria's actual conduct followed the court's statement that Sakaria's conduct warranted sanctions under the bad-faith exception. Although the court did not label these examples as subjective or objective, the examples cited in the court's litany are all subjective in nature, by any measure.

The court gave further evidence that it considered the subjective nature of the bad-faith exception by noting that Sakaria "is an educated an intelligent woman with no excuse for her continued unreasonable attempts to maintain this lawsuit." Pet. App. 25a (footnote omitted.)[6] Had the court applied an "objective" test, Sakaria's academic credentials would be irrelevant.

Thus, the first question posed by Sakaria is flawed from the outset. Sakaria either misreads or misinterprets the opinions below. Although the magistrate judge stated that both Sakaria and her counsel prosecuted the case beyond the point of "objective reasonableness," that phrase was mentioned only in the context of efforts that should have been made by Sakaria and her counsel subsequent to Sakaria's experts deposition. Pet. App. 22a. The statement containing the phrase "objective reasonableness" and the example that followed related to Sakaria's expert did not form any basis for sanctions imposed on Sakaria. Moreover, the Report and Recommendation defined "objective" bad faith as "'reckless or callous disregard for the law'" or "'when a party . . . recklessly maintains an action long after it becomes clear that the claims at issue are no longer colorable.'" Pet. App. 20a (quoting, respectively, *Harris v. Marsh*, 679 F. Supp. 1204, 1376 (E.D.N.C. 1987), *vacated in part*, 123 F.R.D. 204 (E.D.N.C. 1988), *aff'd in part, rev'd in part, Blue v. U.S. Dept. of Army, supra*; citing *In re TCI Ltd.*, 769 F.2d 441, 442 (7th Cir. 1985); and *Harris v. Marsh, supra* at 1377; citing *Nemeroff v. Abelson*, 704 F.2d 652, 569-60 (2d Cir. 1983).

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[6]The Court noted that Sakaria has a BS in mathematics and physics from Fisk University, graduating magna cum laude and Phi Beta Kappa, and later received an MBA from Wayne State. Pet. App. 25a n. 16.

Sakaria's argument engages in sophistry. She argues isolated semantics in a vacuum, rather than considering the Report and Recommendation as a whole. The Report and Recommendation, although using the word "objective," cites law that provides an appropriate standard ("reckless and callous") and details party-specific facts to support its recommendation.

Curiously, Sakaria further ignores that bad faith itself justifies a Rule 11 sanction for papers filed, although bad faith is no longer a prerequisite for a Rule 11 violation. Thus, a finding of bad faith is itself a Rule 11 violation for those papers which Sakaria signed, such as her Answers to Interrogatories and other affidavits she supplied to the Court.

III. The Statement In The Memorandum That Counsel "Failed To Advise Plaintiff To Dismiss The Case" Has No Colorable Basis And Does Not Warrant Consideration Of That Issue By This Court.

In adopting the Report and Recommendation of the magistrate judge, the District Court issued a Memorandum that augments the Report and Recommendation. The Report and Recommendation endorsed sanctions against counsel because "his signature on the opposition to the defendants' motion for summary judgment constituted a violation of Rule 11 . . . ." Pet. App. 22a. The Memorandum adopts the Report and Recommendation, and expanded the magistrate judge's recommendation by listing conduct supporting the Rule-11 basis for counsel's signature on the opposition: failing to pursue discovery, failing to obtain a stay,, failing to attempt to develop admissible evidence, and "failing to advise plaintiff to dismiss the case."

The sole basis to support the statement that counsel failed to advise plaintiff to dismiss the case is found in Sakaria's self-serving affidavit, supplied only after the motion for sanctions was fully briefed by all parties, after a hearing was held, and after the magistrate judge issued the Report and Recommendation. Pet. App. 15b, ¶ 17. Curiously, during the development of the record Sakaria never argued that she acted on advice of counsel, or that she was not advised to dismiss her case.

Despite Sakaria's current position that her "vigorous litigation" was "taken with the advice of counsel," Pet. App. 7, that statement simply has no support in the record. Indeed, certain facts suggest that the litigation was driven by Sakaria rather than her counsel. *See, e.g.*, Report and Recommendation, Pet. App. 12a (noting that first counsel retained by Sakaria had "substantial difficulties in obtaining answers [to discovery]" and withdrew on the grounds of "irreconcilable differences.")

Sakaria does not dispute that represented parties, as well as their attorneys, are subject to sanctions. *Business Guides, Inc. v. Chromatic Communications Enterprises*, 498 U.S. ___, 111 S.Ct. 922, 932, 112 L.Ed. 2d 1140, 1157 (1991); *Chambers v. NASCO, Inc.*, *supra*. As the Supreme Court noted in *Business Guides*, "[q]uite often it is the client, not the attorney, who is better positioned to investigate the facts supporting a paper or pleading." *Id.* at 498 U.S. ___, 112 L.Ed. at 1158. *Business Guides* also holds that a party, for Rule 11 purposes, is subject to the same objective standard as her lawyer.

Sakaria's timing prevented the Insurers from pursuing with her attorneys whether her "advice of counsel" statement was truthful, although her statement is an obvious waiver of

the attorney/client privilege. Of course, to the extent that Sakaria believes she was wrongfully sanctioned because of inadequate legal counsel, her remedy lies against that counsel.

More importantly, as is demonstrated above, sanctions against Sakaria personally were warranted not because of any act or omission by her counsel, but rather by her own admitted conduct. She should not now be permitted to rely on her own self-serving statement that has never be subjected to scrutiny by the court or by any other party to defeat sanctions imposed upon her for her own conduct.

The record is clear as to why Sakaria was sanctioned; the record is devoid of any colorable evidence that Sakaria's sanctioned conduct was taken on advice of counsel. Sakaria alone had the opportunity to develop the record as to the relationship between she and her counsel; she chose not to make "advice of counsel" an issue until too late.

Whether sanctioning a party is appropriate when the party is acting under advice of counsel necessitates a fact-based inquiry as to what advice, if any, was rendered to the party. Sakaria did not develop the necessary facts, although she had the unique opportunity to do so. She should not be permitted, then, to litigate the issue which is simply not ripe.

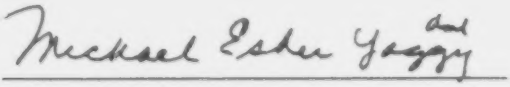
In summary, were the Court to accept Sakaria's argument, the consequences would require full inquiry into all advice rendered by counsel in every case at the initial stage of sanctions proceedings. Although some cases may warrant such inquiry, two considerations in this action mitigate against such inquiry. First, the conduct by Sakaria that the Report and Recommendation cited as the basis for sanctions is conduct regarding matters peculiarly within

Sakaria's knowledge and control. Second, Sakaria had repeated opportunities to provide specific facts concerning her contention that she acted "on advice of counsel." At no time has Sakaria disputed that any act for which she was sanctioned was taken on advice of counsel.

CONCLUSION

For these reasons, the Insurers respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



Michael Esher Yaggy
(Counsel of Record)
Michael S. Barranco
Diane M. Lank

Piper & Marbury
36 South Charles Street
Baltimore, Maryland 21201
(410)539-2530

October 15, 1992

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ELPIS SAKARIA,
P.O. Box #321
Beltsville, MD 20705

Plaintiff,

v. Civil No: HM-87-3302

ALLSTATE LIFE INSURANCE
COMPANY
60 Allstate Plaza
North Brook, IL 60062

SERVE: Insurance Commissioner
501 St. Paul Place
7th Floor
Baltimore, MD 21202

MINNESOTA MUTUAL LIFE
INSURANCE COMPANY,
400 No. Robert Street
St. Paul. MN 55164

SERVE: Insurance Commissioner
501 St. Paul Place
Baltimore, MD 21202

AMERICAN EXPRESS TRAVEL
RELATED SERVICES
7777 American Expressway

Ft. Lauderdale, FL 33337

SERVE: Insurance Commissioner
501 St. Paul Place
Baltimore, MD 21202

Defendants.

* * * * * * *

COMPLAINT

1. Jurisdiction is conferred on this Court by virtue of 28 U.S.C. Section 1332.

2. The amount in controversy exceeds $10,000 dollars.

3. The Plaintiff, Elpis Sakaria, is and at all times relevant hereto was a resident of the State of Maryland.

4. The Defendant, American Express Travel Related Services is a corporation who, among other things, issues life insurance to holders of the American Express card. Its principle place of business is in the State of Florida.

5. The Defendant, Minnesota Mutual Life Insurance Company is a corporation which issues life insurance. Its principle place of business is in the State of Minnesota.

6. The Defendant, Allstate Life Insurance Company is a corporation which issues life insurance. Its principle place of business is in the State of Illinois.

7. On December 26, 1985, at approximately 3:35 P.M., Jagdish Sakaria left Washington National Airport on Trans World Airlines, flight 744 bound for New York's Kennedy Airport.

8. On December 26, 1985, at approximately 6:55 P.M., Mr. Sakaria left the New York Kennedy Airport on Trans World Airlines flight 840 bound for Athens, Greece.

9. On December 27, 1985, TWA flight 840 landed at Rome's Leonardo DaVinci Airport apparently for a change of planes before ultimately reaching Athens, Greece.

10. At or about the time flight 840 was approaching the Rome airport, terrorists staged an attack on the airport killing several people.

11. After flight 840 landed in Rome, TWA officials kept the passengers on the plane until it was established that the airport was secure.

12. Thereafter, those aboard flight 840 were ushered through the airport terminal to another plane. On this trip through the airport, the aftermath of the bloody attack was visible to all the passengers.

13. Mr. Sakaria arrived in Athens on December 27, 1985. On arriving in Athens, Mr. Sakaria's state was one of agitation and distress at the events which he had encountered on his trip.

14. On December 28, 1985, Mr. Sakaria traveled to the home of his in-laws in the village of Aghios Georgios Nilias in Magnisia, Greece. His state of psychological shock and distress over the events in Rome continued.

15. On December 29, 1985, Mr. Sakaria was discovered dead in his bed.

16. Autopsy performed in Greece demonstrated that Mr. Sakaria had died of an acute myocardial infarction. There was no evidence of pre-existing cardiovascular disease.

COUNT I

17. The Plaintiff, Elpis Sakaria, adopts and incorporates herein the allegations contained in paragraphs 1 through 16.

18. Mr. Sakaria purchased his airline ticket for flights 744 and 840 using his American Express card. As such, he was entitled to life insurance benefits available for cardholders through the American Express Travel Related Services.

19. That policy, No. DGA03251111, contained within it, provisions for recovery in the event of accidental death.

20. Mr. Sakaria's death was due to the direct effects of the psychological trauma which he suffered during the course of his travel from Washington, D.C. to Athens, Greece. Therefore, his surviving spouse, Elpis Sakaria, is entitled to recover the sum of $100,000 for his accidental death.

21. On January 30, 1985, Mrs. Sakaria timely made claim for benefits under the policy.

22. By letter dated August 6, 1987, the American Express Travel Related Services, through its subsidiary AMEX Life Assurance Company, wrongfully denied the claim in contradiction to the terms of its policy.

WHEREFORE, Plaintiff claims damages against American Express Travel Related Services in the amount of $100,000 plus interest, costs and other remedies that the Court may feel are appropriate.

COUNT II

Plaintiff, Elpis Sakaria, adopts and incorporates herein the allegations contained in paragraphs 1 through 16.

23. At the time of his death Mr. Sakaria was insured under a life insurance policy issued by Minnesota Mutual Life Insurance Company.

24. That policy, No. 0373142, contained within it provisions for recovery in the event of accidental death.

28.[sic] Mr. Sakaria's death was due to the direct effects of the psychological trauma which he suffered during the course of his travel from Washington, D.C. to Athens, Greece. Therefore, his surviving spouse, Elpis Sakaria, is entitled to recover the sum of $100,000 for his accidental death.

29. On January 30, 1985, Mrs. Sakaria timely made claim for benefits under the policy.

30. By letter dated, December 12, 1986, the Minnesota Mutual Life Insurance Company wrongfully denied the claim in contradiction to the terms of the policy.

WHEREFORE, Plaintiff claims damages against Minnesota Mutual Life Insurance Company in the amount of $100,000, plus interest, costs and other remedies that the Court feels appropriate.

COUNT III

Plaintiff, Elpis Sakaria, adopts and incorporates herein the allegations contained in paragraphs 1 through 16.

31. At the time of his death Mr. Sakaria was insured under a life insurance policy issued by Allstate Life Insurance Company.

32. That policy No. 05003200, contained within it, provisions for recovery in the event of accidental death.

33. Mr. Sakaria's death was due to the direct effects of the psychological trauma which he suffered during the course of his travel from Washington, D.C. to Athens, Greece. Therefore, his surviving spouse Elpis Sakaria is entitled to recover the sum of $500,000 for his accidental death.

34. On January 30, 1985, Mrs. Sakaria timely made claim for benefits under the policy.

35. By letter dated August, 1987, the Allstate Life Insurance Company wrongfully denied the claim in contradiction of the terms of the policy.

WHEREFORE, the Plaintiff claims damages against Allstate Insurance Company in the amount of $500,000, plus interest, costs nd other remedies that the Court might feel appropriate.

COUNT IV

Plaintiff, Elpis Sakaria, adopts and incorporates herein the allegations contained in paragraphs 1 through 16.

36. At the time of his death, Mr. Sakaria was insured under separate life insurance policy issued by Allstate Insurance Company.

37. That policy No. 064008256, contained within it, provisions for recovery in the event of accidental death.

38. Mr. Sakaria's death was due to the direct effects of the psychological trauma which he suffered during the course of is travel from Washington, D.C. to Athens, Greece. Therefore, his surviving spouse Elpis Sakaria is entitled to recover the sum of $90,000 for his accidental death.

39. On January 30, 1985, Mrs. Sakaria timely made claim for benefits under the policy.

40. By letter dated August 31, 1987, the Allstate Life Insurance Company wrongfully denied the claim in contradiction of the terms of the policy.

WHEREFORE, the Plaintiff claims damages against Allstate Insurance Company in the amount of $90,000, plus interest, costs and other remedies that the Court might feel appropriate.

COUNT V

Plaintiff, Elpis Sakaria, adopts and incorporates herein the allegations contained in paragraphs 1 through 16.

41. At the time of his death Mr. Sakaria was insured under a life insurance policy issued by Allstate Life Insurance Company

42. That policy No. 05003145 contained within it, provisions for recovery in the event of accidental death.

43. Mr. Sakaria's death was due to the direct effects of the psychological trauma which he suffered during the course of his travel from Washington, D.C. to Athens, Greece. Therefore, his surviving spouse Elpis Sakaria is entitled to recover the sum of $250,000 for his accidental death.

44. On January 30, 1985, Mrs. Sakaria timely made claim for benefits under the policy.

45. By letter dated August 31, 1987, the Allstate Life Insurance Company wrongfully denied the claim in contradiction of the terms of the policy.

WHEREFORE, the Plaintiff claims damages against Allstate Insurance Company in the amount of $250,000, plus interest, costs and other remedies that the Court might feel appropriate.

COUNT V [sic]

46. Plaintiff, Elpis Sakaria, adopts and incorporates herein the allegations contained in paragraphs 1 through 16.

47. At the time of his death Mr. Sakaria was insured under a life insurance policy issued by Allstate Life Insurance Company.

48. That policy No. 05003031, contained within it, provisions for recovery in the event of accidental death.

49. Mr. Sakaria's death was due to the direct effects of the psychological trauma which he suffered during the course of his travel from Washington, D.C. to Athens, Greece. Therefore, his surviving spouse Elpis Sakaria is entitled to recover the sum of $10,000 for his accidental death.

50. On January 30, 1985, Mrs. Sakaria timely made claim for benefits under the policy.

51. By letter dated August 31, 1987, the Allstate Life Insurance Company wrongfully denied the claim in contradiction of the terms of the policy.

WHEREFORE, the Plaintiff claims damages against Allstate Insurance Company in the amount of $10,000, plus interest, costs and other remedies that the Court might feel appropriate.

Brault, Graham, Scott & Brault

By: /s/ Albert d. Brault
Albert D. Brault, 01041
By: /s/ M. Kathleen Parker
M. Kathleen Parker, 03524
101 So. Washington Street
Rockville, MD 20850

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ELPIS SAKARIA

v. CIVIL NO. HM-87-3302

ALLSTATE LIFE INSURANCE CO.,
et al.

* * * * * * *

MAGISTRATE'S REPORT AND RECOMMENDATION

On December 9, 1987, the plaintiff, Elpis Sakaria, filed this suit against defendants American Express Travel Related Services ("AMEX") Minnesota Mutual Life Insurance Company ("Minnesota"), and Allstate Life Insurance Company ("Allstate"). She seeks to recover money allegedly due for the death of her husband, Jagdish Sakaria, on December 29, 1985, under accidental death policies issued by these companies. The defendants' motion for summary judgment, and their related motion to strike the plaintiff's answers to requests for admissions, have been referred to me for disposition by Judge Herbert F. Murray pursuant to 28 U.S.C. §636(b) and Local Rule 301. For the reasons that follow, I will recommend that the defendants' motion for summary judgment be granted and by separate Order will grant their motion to strike the plaintiff's untimely response to the defendants' request for admissions.

Facts

In 1978 Mr. Sakaria was injured in an automobile accident resulting in a post-concussion syndrome with significant brain dysfunction. Apparently this manifested itself through a variety of symptoms including loss of memory, paranoia, depression, feelings of being threatened

by nonexistent situations, and episodes of "confabulation" or reporting nonexistent situations. (Defendants' Reply to Opposition, Attached Deposition of Spiridon Koulouris, M.D. at 8-10).

On December 26 and 27, 1985, Mr. Sakaria travelled from his home in Maryland to Athens, Greece. He flew on TWA Flight 840 ("Flight 840") from New York to Athens, with a stop in Rome, Italy. The stop in Rome was a scheduled part of the itinerary; Mrs. Sakaria, however, claims that she was told the flight would be "nonstop" to Athens.

On the morning of December 27, 1985, a terrorist attack occurred in a section on the second floor of the Rome airport terminal. Accordingly, when Flight 840 landed at the airport shortly thereafter, the plane was kept parked on a section of the airport some distance from the terminal for approximately one and one-half hours, during which the passengers were kept on the plane. The passengers apparently were told there had been an altercation, possibly an armed altercation, at the airport, but were given no further details.

The parties dispute the degree of ventilation available on the plane during this time period. In their motion for summary judgment, the defendants have submitted deposition excerpts from the captain of Flight 840 and from several passengers who testified that the temperature on the plane during the hour and a half wait was not uncomfortably warm, that the doors were open, and that there was no problem with ventilation or oxygen. (Defendants' Motion for Summary Judgment, Exhibits 13, 14, 16, 17, 18). Thereafter, the passengers continuing to Athens were taken by bus or tram to a designated area on the first floor of the terminal. That area was sealed off by security personnel and ropes.

Although the armed security personnel were visible to the travelers, the plaintiff has conceded that "in general, with possible exceptions, none of the passengers had occasion to view any of the aftermath of the terrorist attack or see any of the bodies." (Plaintiff's opposition to Defendants' Motion at 2). Passengers also testified that the mood on the airplane was calm, that while waiting inside the terminal they were not permitted to leave the designated area, and that they were never exposed to any visible signs of the bombing attack. (Defendants' Motion for Summary Judgment, Exhibits 13, 16, 17, 18).[1] No admissible evidence has been offered that Mr. Sakaria saw any of the casualties of the attack.[2]

After approximately one and a half to two hours in the designated area of the airport, the passengers were taken by bus to the aircraft used for the continuation of Flight 840 to Athens. There is no evidence that Mr. Sakaria, or any of the other passengers, sought medical attention or complained of any medical condition during the flight to Rome, while sitting in the parked aircraft, while waiting in the terminal, or during the flight to Athens.

On arrival in Athens, Mr. Sakaria was met by Mr. Nick Bafitis. Mr. Bafitis indicated that Mr. Sakaria appeared ill,

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[1]The only exception was Rev. Lee's recollection that he may have seen some bullet holes, probably when he visited the airport he[sic] day after the attack. (Id., Exhibit 13).

[2]Mr. Sakaria reportedly told Nick Bafitis, who met him at the airport, that he had seen blood and bodies on the floor and heard people screaming. He reportedly told his father-in-law that while he was enclosed in the plane, a battle was going on outside. (See unsworn statements attached as part of Exhibit 19 to Defendants' Motion for Summary Judgment).

describing his face as "yellow and red," and his eyes as "bulging and black." He stated that Mr. Sakaria was "grasping for his throat." (Id., Exhibit 19, Attachment).[3] After spending the remainder of the day in Athens with Mr. Bafitis, Mr. Sakaria spent that evening with Mr. Bafitis and Mr. Bafitis' mother. The next day, December 28, 1985, Mr. Sakaria and Mr. Bafitis drove to a village in Greece where Mr. Sakaria's mother and father-in-law lived. They stopped to visit, the plaintiff's sister along the way. Mr. Sakaria did not seek medical treatment either day. Sometime in the early morning hours of December 29, 1985, more than one and a half days after the stopover in Rome, Mr. Sakaria was found dead in bed by his parents-in-law. The doctors who performed the autopsy attributed the death to an acute myocardial infarction. (Id., Exhibit 20).

As of December 29, 1985, Mr. Sakaria was covered by various life insurance policies which contain specific provisions for benefits in the case of accidental death. The plaintiff, Mrs. Sakaria, filed a claim for those benefits in early 1986. The claims were denied.

The defendants do not dispute that Mr. Sakaria was insured under the policies, or that the policies provided coverage for accidental death. They deny, however, that Mrs. Sakaria has shown her husband's death was the result of an accidental injury, directly and independently of all other causes, as required by the policies.

To prove causation, the plaintiff relies on the opinion of H. Brandis Marsh, M.D., a cardiologist. By letter dated

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[3]No affidavit or deposition testimony from Mr. Bafitis has been submitted.

December 23, 1988, Dr. Marsh opined that Mr. Sakaria died "as a result of a rhythm disorder caused by a myocardial infarction provoked by the circumstances of travel," from which Dr. Marsh inferred, within his understanding of the meaning of the word, that the death was "accidental". Dr. Marsh, who reviewed no deposition testimony, relied on two crucial assumptions: 1) that Mr. Sakaria spent one and a half hours in a closed airplane at the Rome airport with no air conditioning or air circulation, resulting in an extremely warm and oppressive atmosphere, and 2) that when Mr. Sakaria disembarked from the plane, he walked through the airport where he saw "rather graphic evidence of the carnage caused by the bombing." (Id., Exhibit 15). Dr. Marsh also relied on Mr. Bafitis' report that Mr. Sakaria complained of discomfort in his throat, described as a sense of dryness, when he arrived in Athens. On deposition, however, Dr. Marsh testified that if the hour and a half on the runway was not characterized "by a heat stifling environment etc.," and the mood on the plane was quiet and calm, and further that Mr. Sakaria never saw any of the carnage or bodies and heard no shooting or grenades, that it would alter his opinion, and he would no longer subscribe to the opinion expressed in his letter of December 23, 1988. (Id., Exhibit 19 at 43-44).

I. Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides that:

> (Summary judgment) shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

> moving party is entitled to a judgment as a matter of law.

As recently stated by the Supreme Court, this does not mean that any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2511 (1986) (emphasis in original).

Moreover, the Supreme Court has explained that the Rule 56(c) standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 56(a): "there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." Anderson v. Liberty Lobby, Inc., supra, 106 S.Ct. at 2511; White v. Rockinaharn Radiologists, Ltd., 820 F.2d 98, 101 (4th Cir. 1987). "The party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." Rivanna Trawlers Unlimited v. Thompson Trawlers, 840 F.2d 236, 240 (4th Cir. 1988). Further, the court has an affirmative obligation to prevent factually unsupported claims and defenses from proceeding to trial. Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987), citing, Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 2553 (1986). "[A] defendant...should not be required to undergo the considerable expense of preparing for and participating in a trial" unless the plaintiff has

produced "evidence on which a jury might rely" in support of the claims alleged. E.F. Hutton Mortgage Corp. v. Equitable Bank, 678 F.Supp. 567, 573 (D.Md. 1988).

II. Causation

The plaintiff bears the burden of proving that her husband's death was "accidental" within the meaning of the coverage provided by the policies. See Questech, Inc. v. Hartford Acc. and Indem. Co., 713 F.Supp. 956, 964 n.20 (E.D.Va. 1989). The relevant language is set forth as follows:

AMEX Policy:

> "Injury means bodily injury which:
> . . . c. creates a Loss due, directly and independently of all other causes, to such accidental bodily injury.

Minnesota Mutual Policy:

> "Death by accidental injury" as used in this policy means that the insured's death results directly and independently of all other causes from an . . . accidental injury which was unintended, unexpected, and unforeseen . . . In no event will we pay the accidental death benefit where the insured's death results from or is caused directly or independently by any of the following:
>
> (3) bodily or mental infirmity, illness or disease.

Allstate Policy:

> Injury ~ means bodily injury caused by an accident occurring while the insurance is in force and which injury results . . . directly and independently of all other causes, in any of the losses to which the insurance applies, to wit, death . . .

(Defendants' Motion for Summary Judgment, Exhibits 4-9).

Assuming for the moment that the events in Rome could be considered an "accident," proof that such events directly and independently caused Mr. Sakaria's heart attack would be sufficient for Mrs. Sakaria to recover benefits. The Court of Appeals of Maryland recently reiterated its holding that:

> (W)here the death is from a disease which was itself caused by the accident, the latter is to be regarded as the true and predominant cause of the death, and the disease as a mere link in the chain of causation, and the death is to be regarded as having resulted solely from the accident independently of all other causes. General Acc. Co. v. Homely, 109 Md. 93, 99, 71 A. 524 (1908).

Cheney v. Bell National Life Ins., 315 Md. 761, 556 A.2d 1135, 1137 (1989).[4] In the case of a hemophiliac who died after receiving contaminated blood, the Cheney court stated: "Assuming that the transfusion of contaminated blood or blood products into the insured constituted an accidental injury within the meaning of the policy, the AIDS and

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[4]The parties have not disputed that Maryland law controls in this case.

pneumonia caused thereby are considered in 'link(s) in the chain of causation,' and the accidental injury remains the cause of death." Id. With the alteration of Dr. Marsh's opinion in the face of more accurate facts, however, the plaintiff has not advanced sufficient evidence of causation to survive a motion for directed verdict. Consequently, she cannot survive a motion for summary judgment.

Moreover, it appears that Dr. Marsh was not advised of the confabulation or paranoia Mr. Sakaria exhibited as a result of his prior injury. If Mr. Sakaria reported the events in Rome to his relatives in Athens as alleged, it appears likely that his distorted perception of those events, and any resulting stress, were not caused "independently" of his underlying mental illness.

III. "Accidental" Death

Under Maryland law, insurance policies are construed like other contracts. The intention of the parties is to be determined from the policy as a whole, and words are to be given their usual, ordinary, and accepted meanings unless there is evidence that the parties intended otherwise. Cheney v. Bell, supra, 556 A.2d at 1138. If there is an ambiguity, it will be construed against the drafter, but Maryland does not follow the rule that an insurance policy is to be construed most strongly against the insurer. Id.

In this case, it may be doubted that the events at the Rome airport were accidental within the ordinary meaning of the word. See American Home Assur. Co. v Osbourn, 47 Md. App. 73, 422 A.2d 8, 13 (1980) (trespass and conversion not an "accident"). The actions of the terrorists were deliberate and criminal; the actions of the pilot and airport officials in landing the plane, parking it at a distance

from the terminal, and keeping the passenger in a secure area inside the terminal, were also deliberate and, intended to insure the passengers' safety. It is not necessary to resolve the distinction between "accidental means" and "accidental result," however,[5] because the plaintiff has not offered sufficient evidence of independent causation in any event.

IV. Request for Admissions

On September 1, 1989, the defendants served requests for admissions on the plaintiff. No response was filed until October 23, 1989, more than 30 days after service and also after filing of the defendants' motion for summary judgment. The plaintiff did not request permission from the court for late filing.

Fed. R. Civ. P. Rule 36(a) provides that requests are deemed admitted unless a response is filed within 30 days, or such shorter or longer time as the court may allow. The defendants accordingly relied on the admissions in their motion for summary judgment and have filed a motion to strike the plaintiff's untimely answers.

Late filing may be permitted unless the opposing party shows material prejudice from the delay. See, e.g., Donovan v. Porter, 584 F.Supp. 202, 207-08 (D.Md. 1984). In this case, however, the plaintiff has not opposed the defendant's motion to strike, nor has she moved to withdraw her admissions. See United States v. Kasuboski, 834 F.2d 1345, 1350 (7th Cir. 1987). The defendants have asserted prejudice if forced to continue discovery in an attempt to prove the matters admitted, and because of their reliance on

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[5]See Cheney v. Bell, supra, 556 A.2d at 1138 n.2.

the admissions in moving for summary judgment.[6] Under the circumstances, the defendants' motion will be granted.

V. Conclusion

For the reasons stated above, it is hereby recommended that defendants' motion be granted and judgment be entered for the defendants. The defendants' motion to strike will be granted by separate Order.

January 10, 1990

/s/ Catherine C. Blake
Catherine C. Blake
United States Magistrate

[6]I did not find it necessary, however, to rely on the plaintiff's admissions in recommending summary judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ELPIS SAKARIA

v. CIVIL NO. HM-87-3302

ALLSTATE LIFE INSURANCE COMPANY,
et al.

* * * * * * *

ORDER

The Court has considered the Report and Recommendation of Magistrate Blake, dated January 10, 1990, in the above-captioned case and no objections have been filed within the time allowed by law. See Fed. R. Civ. P. 72. Having reviewed the file, the Court will accept the conclusions and findings of the Magistrate. Accordingly, it is this 12th day of February, 1990, by the United States District Court for the District of Maryland,

ORDERED:

(1) that the Report and Recommendation of the Magistrate be, and the see hereby is, Affirmed and Adopted;

(2) that defendants' Motion for Summary Judgment be, and the same hereby is, Granted;

(3) that judgment be, and the same hereby is, Entered in favor of defendants and against the plaintiff; and

(4) that the Clerk of the Court shall mail a copy of this Order to the parties.

/s/ Herbert F. Murray
Senior United States District Judge

Statement of Labros Stamoulis

The following is the substance of my interview with Mrs. Sakaria's father on Saturday, August 9, 1986: (through Mrs. Sakaria as interpreter since her father does not speak English)

When I saw Jack I asked him if he was all right, and how was his trip. Jack said it was a miracle that he was still alive. He told of being enclosed in the plane and a battle was going on outside of the plane. He said "You can't imagine father, the bodies and blood all over. They were using hand grenades and automatic guns. How did we get out of it alive." "They closed us inside the plane and I couldn't breathe. And after I did get out I still could not breathe. I was scared to death - terrified."

When I saw Jack he still had bad color in his face.

Jack was "on his feet" after arrival in the village only about 1 1/2 hours, all the time talking about Rome. Then he wanted to lie down - said he felt sick.

Jack got up about 4:30 a.m. (he had slept in the same room as his wife's parents) and went to the bathroom. He then returned to bed and was found dead in the morning.

Labros Stamoulis
father of Mrs. Sakaris [sic]

/s/ Labros Stamoulis 9/15/86

Statment of Nicholas Bafitis

The following is the substance of my interview with Mr. Bafitis on Saturday, August 9, 1986:

When Jack got off the plane in Athens and came into the terminal, I could hardly recognize him by his face. It was yellow and red, his eyes were bulging, were completely black with big circles and swelling around his eyes. He was grasping for his throat and looked quite sick.

Perhaps I should have taken him to a doctor, but I thought he was just overly tired from his trip.

When he first saw me he said "You wouldn't believe what happened to us." I said "No, I have no idea". He stopped in the middle of the waiting room and began to tell me. He said he saw the blood, the bodies on the floor, people screaming -". He said he felt so bad about it - the first time in his life he had ever seen anything like that.

He said he had been forced to stay in the aircraft without any air, with the engines shut down, no circulation. His throat got awfully dry. He was holding his throat when I met him.

Jack wanted to call his wife right away, but I told him to calm down and we would call her from my home.

My home is not far from the airport, and when we arrived there my mother offered him some lemonade - afterwards he asked for some tea.

On the way from the airport and all during our stay at my mother's house he kept repeating and repeating over and

over again his account of the Rome incident and acted as though it was still going on.

I called Jack's wife from my mother's house and tried to break the news gently to his wife before putting Jack on. I told her what had happened at Rome but that Jack was all right and was right here to talk with her. Jack then talked with his wife and told her not to worry - that he was lucky to be alive - that he could not tell her all about it over the phone - but that he was here now and all right.

At my mother's house in Athens Jack went to bed in a room by himself, about 10:00 p.m. In the morning I went into the room to waken Jack and when I just touched him he jumped up in a terrified way. He seemed to be in a daze. He ate no breakfast, just had some coffee. He looked the same as he did when I met him at the airport.

We then left for the village to see his children, and on the way he kept telling me about the Rome incident during the four hours of riding. I offered to let him drive, just to get his mind off the incident. Again and again he kept saying "Nick, it is a miracle that I am alive." Again and again he referred to all the blood he had seen.

At the village I told Mrs. Sakaria's father that something was wrong with Jack and perhaps they should take him to see a doctor. When his wife's father and mother had seen Jack in Silver Spring, Maryland September 15, his attitude was reserved as was customary. When he saw them at the village he hugged them both, emotionally - an act which surprised them.

I had seen Jack on December 20 or 21, in Silver Spring, Maryland, but when I saw him at the airport in Athens

December 27, he looked altogether different. He really looked sick.

My mother called Mrs. Sakaria's sister in the village the day after Jack died and stated that he had looked sick and had thought he should have seen a doctor.

/s/ Nick Bafitis